

IN THE

DEC 4 1972

Supreme Court of the United States

MICHAEL RODAK, JR., CL

October Term, 1972

No. 72-694

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK, THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN, ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM, BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS, ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER, DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON and CHARLES H. SUMNER,

Appellants,

—against—

EWALD B. NYQUIST, as Commissioner of Education of the State of New York, ARTHUR LEVITT, as Comptroller of the State of New York, and NORMAN GALLMAN, as Commissioner of Taxation and Finance of the State of New York,

Appellees,

—and—

GERALDINE M. BOYLAN, PRISCILLA L. CHERRY, JOAN M. DUCEY, NORA H. FERGUSON, ANGELINA M. FERRARELLA, ERNEST E. ROOS, JR. and ADAMINA RUIZ,

Appellees,

—and—

SENATOR EARL W. BRYDGES, as Majority Leader and President Pro Tem of the New York State Senate,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**MOTION TO AFFIRM on behalf of APPELLEES
BOYLAN, DUCEY, FERRARELLA and ROOS**

PORTER R. CHANDLER

Attorney for Appellees

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Of Counsel

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**MOTION TO AFFIRM on behalf of APPELLEES
BOYLAN, DUCEY, FERRARELLA and ROOS**

Appellees Boylan, Ducey, Ferrarella and Roos are parents of nonpublic school children who qualify for modification of their New York adjusted gross incomes pursuant to Sections 3, 4 and 5 of Chapter 414 of the 1972 Laws

of New York and who intervened as parties defendant and actively participated in the proceedings in the District Court. They hereby join in the motions made by appellees Nyquist, Levitt and Gallman and by appellee Senator Earl W. Brydges to affirm so much of the judgment of the United States District Court for the Southern District of New York entered on October 20, 1972 as declared that Sections 3, 4 and 5 do not violate the Establishment Clause of the First Amendment to the United States Constitution, granted appellees summary judgment with respect to those sections and dismissed the complaint with respect thereto.

WHEREFORE, it is respectfully requested that the judgment of the District Court with regard to Sections 3, 4 and 5 be affirmed.

Dated: December 1, 1972

Respectfully submitted,

PORTER R. CHANDLER

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